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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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12 JOHN EARL CAMPBELL,

13 Plaintiff,

14 v.

15 NATIONAL PASSENGER RAILROAD
16 CORPORATION dba AMTRAK, JOE
DEELY, and DOES 1-15, inclusive,

17 Defendants.
18

) NO. C05-5434 MJJ (EDL)
)
)

) **PLAINTIFF'S NOTICE OF MOTION AND**
) **MOTION TO COMPEL FURTHER**
) **ANSWERS TO INTERROGATORIES**
)

) DATE: May 1, 2007
) TIME: 9:00 a.m.
) DEPT.: Courtroom E, 15th Floor
)

) DISCOVERY CUT-OFF: March 23, 2007
)

) TRIAL DATE: July 23, 2007
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21 **DISCOVERY MATTER**
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1 way of obtaining this evidence.

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3 **SUMMARY OF FACTS**

4 MR. CAMPBELL began his work on the railroad at Southern Pacific Railroad in May 1984.
5 He worked for Southern Pacific for eight (8) years as a Machine Operator. This job involved
6 maintenance and repair of the tracks, including those caused by derailments. As a Machine
7 Operator, he also maintained and repaired railroad right of ways and operated heavy track
8 machinery. MR. CAMPBELL became very knowledgeable of railroad operations, learning
9 virtually all of the rules of the railroad trade. He was well prepared for his work with Defendant
10 AMTRAK.

11 MR. CAMPBELL was employed by Defendant AMTRAK from November 1998 to
12 September 17, 2004. During his employment with AMTRAK, he applied for promotion to the
13 position of Engineer six (6) times. Each time his application was rejected and lesser qualified,
14 less senior Caucasian applicants were promoted to the position.

15 In June 1999, MR. CAMPBELL applied for the Engineer position for the first time. His
16 application was rejected on the grounds that he was not eligible to apply based on the length of
17 his employment with AMTRAK. In 2000 and 2001, MR. CAMPBELL applied again, and was
18 interviewed for the Engineer position, but other applicants with less seniority than he were
19 selected. In 2002, his scheduled interview was cancelled. MR. CAMPBELL was never given a
20 reason why.

21 In November 2003, MR. CAMPBELL applied for the Engineer position for the fifth time.^{1/}
22 Interviews were held in December 2003, but he was not scheduled for an interview, even though
23 he was qualified for the position. In January 2004, MR. CAMPBELL learned that two less
24 qualified Caucasian applicants with less seniority were selected for the position.

25 On January 28, 2004, MR. CAMPBELL filed a Charge of Discrimination with the
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27 ¹ This is the first discriminatory promotion that fall within the statute of limitations.
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1 California Department of Fair Employment & Housing (DFEH) and the United States Equal
 2 Employment Opportunity Commission (EEOC), challenging his non-selection for the Engineer
 3 position and asserting that Defendant AMTRAK discriminated against African-Americans on the
 4 basis of race in promoting applicants to the Engineer position.

5 In June 2004, while his charge of discrimination was pending, MR. CAMPBELL applied for
 6 the Engineer position for the sixth time.^{2/} There were seven (7) positions available in Oakland
 7 and Sacramento. MR. CAMPBELL was willing and able to take any one of these positions. He
 8 was interviewed on July 7, 2004 by a panel which included the Vice Local Chairman of the BLET
 9 Division 144-Amtrak for Oakland Sacramento, Chad M. Skinner. Mr. Skinner reported to MR.
 10 CAMPBELL that:

11 “Your interview was very enlightening and in my opinion
 12 ranked among the best. Your overall score ranked among
 13 the highest of all the applicants we interviewed over the
 14 three-day period. It is unknown to the Organization why
 15 you were not selected however, it was later discovered the
 16 Mr. Patrick Preusser had a meeting with Susan Venturelli
 17 (HR) on Monday, July 11, 2004 to discuss the potential
 18 candidates that were to be selected. The Organization was
 19 never informed of this meeting nor asked to participate in
 20 any capacity despite our contractual right to partake.”
 21 (Exhibit A to the Declaration of Pamela Y. Price
 22 hereinafter “Price DEN”).)

23 In August 2004, seven (7) Caucasian applicants with less seniority were selected for the
 24 positions. MR. CAMPBELL was not promoted or given any reason for his non-selection.

25 On or about August 6, 2004, MR. CAMPBELL was accused of violating Defendant
 26 AMTRAK’s Operating Rules. He was accused of failing to properly secure the brakes on a
 27 locomotive inside the Oakland Yard prior to coupling it on July 24, 2004. An internal hearing
 28 was held on September 9, 2004, and Defendant AMTRAK’s Hearing Officer sustained four (4) of
 the five (5) charges against MR. CAMPBELL. On September 17, 2004, Defendant AMTRAK’s
 District Superintendent for the Pacific Division-Bay District, Steve Shelton, terminated MR.
 CAMPBELL’s employment, ostensibly for these rules violations.

² This is the second discriminatory promotion that falls within the statute of limitations.

1 MR. CAMPBELL's union vehemently objected to this termination, stating that: "the
2 discipline was harsh, excessive and not consistent with discipline assessed in similar cases, not
3 just on Amtrak, but in the entire industry."^{3/} MR. CAMPBELL contends that a violation of these
4 work rules did not usually result in termination, and that his termination is excessive and
5 inconsistent with discipline assessed in similar cases. He intends to prove that he was fired in
6 September 2004 in retaliation for his complaints to DFEH and EEOC in February 2004.

7 **I. MR. CAMPBELL IS ENTITLED TO ANSWERS TO HIS**
8 **INTERROGATORIES**

9 Non-expert discovery cut-off was initially set by this Court for **February 16, 2007**.
10 MR. CAMPBELL served his First Set of Interrogatories on December 21, 2006. Defendant
11 AMTRAK's response was due on January 23, 2007. Following an extensive meet and confer and
12 coercion by defense counsel's various attorneys in this case and in an unrelated case pending before
13 the Honorable Judge Susan Illston entitled *Howard v. Amtrak*, U.S. District Court Case No. C05-
14 4069 SI, MR. CAMPBELL agreed to a lengthy extension, making the new due date for answers
15 March 7, 2007. (Price DEN @ 2:21-3:9.) On February 9, 2007, the parties submitted a stipulation
16 and proposed order to enlarge the time for non-expert discovery up to and including March 23,
17 2007. The Court filed an Order approving the stipulation on February 14, 2007.

18 On March 7, 2007, Defendant Amtrak served its answers to Interrogatories. It objected to
19 Interrogatory Nos. 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 and refused to answer them at
20 all. (Price DEN @ 3:10-12.) It provided a limited response to Interrogatory No. 1. Pursuant to the
21 stipulation of the parties, MR. CAMPBELL had until March 21st to bring a motion to compel based
22 upon any deficient responses.

23 **II. THE INFORMATION SOUGHT IS RELEVANT AND**
24 **CRUCIAL TO THE PROSECUTION OF MR.**
CAMPBELL'S CASE

25 Pursuant to Federal Rule of Civil Procedure 26(b)(1), parties may obtain discovery regarding
26 _____

27 ^{3/} See Organization Member's Dissent To Award No.120 Of Public Law Board No. 6478.
28 (Exhibit B to Price DEN.)

any matter, not privileged, that is relevant to the claim or defense of any party, including the identity and location of persons having knowledge of any discoverable matter. The burden is on the responding party to justify its objections or failure to provide complete answers to interrogatories.

**A. Defendant Amtrak's Boilerplate Objections
Lack Merit**

Defendant AMTRAK's blanket, boilerplate objections to each of MR. CAMPBELL's requests lack merit. Defendant AMTRAK provided a litany of general objections. Such objections will not alone constitute a successful objection, nor will a general objection fulfill the objecting party's burden to explain its objections. (*Ramirez v. County of Los Angeles*, 231 F.R.D. 407, 409 (C.D.Cal. 2005).) General objections are not sufficient to raise any substantial, meaningful or enforceable objections to any particular discovery request. (*In re Air Crash at Taipei, Taiwan*, 211 F.R.D. 374, 376 (C.D.Cal. 2002); *Walker v. Lakewood Condominium Owners Association*, 186 F.R.D. 584, 587 (C.D.Cal. 1999); *Taylor v. Los Angeles Police Department*, 1999 WL 33101661 (C.D.Cal. 1999).)

In addition to its general objections, Defendant AMTRAK asserted the following five objections, in various combinations, to each of MR. CAMPBELL's Interrogatories:

- (1) vague, overbroad, ambiguous and susceptible to a variety of interpretations
- (2) compound and unduly burdensome
- (3) seeking information neither relevant to the litigation nor reasonably calculated to lead to the discovery of admissible evidence
- (4) seeks information protected from disclosure by the California Constitutional right of privacy and/or the federally recognized right to privacy.

**B. Defendant Amtrak Should Not Be Allowed to Hide
Complaints of Racial Discrimination**

Since one of MR. CAMPBELL's claims against Defendant AMTRAK is failure to promote based on racial discrimination, his requests for (1) other complaints of racial discrimination and/or (2) the identity of the decision makers in the promotion decisions (Interrogatory Nos. 13 - 17) are clear and directly relevant and narrowly tailored to lead to further discoverable information. With respect to Defendant's Answer to Interrogatory No. 1, it appears that a restrictive interpretation of

1 the term “complaint” informs the answer. It was not MR. CAMPBELL’s intent, however, to limit
2 the Interrogatory to court cases.

3 Evidence of other complaints against Amtrak would be highly relevant, and admissible under
4 Rule 404 of the Federal Rules of Evidence. (*See Heyne v. Caruso*, 69 F.3d 1475, 1469-1481 (9th
5 Cir. 1994); *Morgan v. National Passenger Railroad Corporation*, 232 F.3d 1008, 1018 (9th Cir.
6 2000), *affirmed in part and reversed in part on other grounds in National Railroad Passenger*
7 *Corporation v. Morgan*, 536 U.S. 101, 122 S.Ct. 2061, 2074 (2002).)

8 Federal cases have often addressed the issue of the admissibility of evidence of other
9 complaints; those cases are persuasive authority for the proposition that discovery of such
10 information is allowed. (*See e.g., Broderick v. Ruder* (D.D.C 1988) 685 F.Supp. 1269, 1277; *Hall*
11 *v. Gus Construction Company, Inc.* (8th Cir. 1988) 842 F.2d 1010, 1015; *Robinson v. Jacksonville*
12 *Shipyards, Inc.* (M.D.Fla. 1991) 760 F.Supp. 1486, 1499; *Lipsett v. University of Puerto Rico* (1st
13 Cir. 1988) 864 F.2d 881; *Priest v. Rotary* (N.D.Cal. 1986) 634 F.Supp. 571, 582; *Burns v.*
14 *McGregor Electronics Industries, Inc.* (8th Cir. 1992) 955 F.2d 559, 562; *Vance v. Southern Bell*
15 *Telephone and Telegraph Company* (11th Cir. 1989) 863 F.2d 1503, 1511.)

16 **C. Defendant Amtrak Should Not Be Allowed to Hide**
17 **Evidence of Its Discriminatory Hiring Practices**

18 Interrogatory Nos. 5, 6, 9, 10, 11 and 12, sought certain information about the racial
19 composition of Amtrak’s workforce in the Pacific Division. This information can be used to
20 demonstrate the context and the environment in which MR. CAMPBELL was employed, and
21 Amtrak’s hiring and termination practices. It has long been held that the Defendants’ hiring and
22 termination practices may be used to prove intentional discrimination. Indeed, in this District,
23 discovery of this nature is routinely allowed. (*See Stender v. Lucky’s Stores*, 803 F.Supp. 259, 331-
24 332 (N.D.Cal. 1992); *Estes v. Dick Smith Ford, Inc.*, 856 F.2d 1097 (8th Cir. 1988).)

25 **D. Defendant Amtrak’s Objections to Mr. Campbell’s**
26 **Interrogatories As Exceeding the Permissible Number of**
Interrogatories Is Unfounded

27 It appears that the primary basis for Defendant Amtrak’s refusal to answer Interrogatory Nos.
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9 through 18 is the assertion in the answers to Interrogatory Nos. 7 and 8 that “this interrogatory shall count as six separate interrogatories and that Plaintiff has exceeded the permissible number of interrogatories.” It appears that Defendant Amtrak believes that the request to list the engineers by year in Interrogatory Nos. 7 and 8 creates subparts which should be counted separately.^{4/} There is no legal authority to support this assertion. In fact, the discovery rules are clear that when an Interrogatory addresses a single subject, it should be counted as a single Interrogatory, not subparts. (*Prochaska & Assocs. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (D.NE 1993) 155 F.R.D. 189, 191; *Safeco of America v. Rawstrom* (C.D.CA 1998) 181 F.R.D. 441, 445).) Accordingly, Defendant’s refusal to answer Interrogatory Nos. 9 through 18 on this ground was totally unjustified.

CONCLUSION

For all of the reasons stated herein, Defendant Amtrak should be compelled to answer Interrogatory Nos. 1, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 forthwith.

Dated: March 21, 2007

Respectfully Submitted,

PRICE AND ASSOCIATES

/s/ Pamela Y. Price
PAMELA Y. PRICE Attorneys for Plaintiff
JOHN CAMPBELL

^{4/} Interrogatory No. 7 states: “State the total number of engineers hired in the Pacific Division by year between January 1998 to the present.” Interrogatory No. 8 states “State the total number of African-American engineers hired in the Pacific Division by year between January 1998 to the present.”